TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 79.

MATILDA R. BEASLEY AND JOSEPH C. BEASLEY, APPELLANTS,

vs.

THE TEXAS AND PACIFIC RAILWAY COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED JUNE 27, 1902.

(18,597.)

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INDEX.

	Original.	Print.
Caption	a	1
Transcript from the circuit court of the United States for the western district of Louisiana	1	1
Bill of complaint	1	1
Sale of right of way	4	4
Restraining order	6	6
Defendant's demurrer to plaintiffs' bill of complaint	8	7
Decree sustaining defendant's demurrer	9	8
Petition for appeal	10	9
Assignment of error	11	10
Order allowing appeal	12	10
Bond on appeal	13	11
Minutes of court; demurrer sustained	14	12

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	Original.	Print
Præcipe for transcript	15	12
Clerk's certificate	16	13
Argument and submission	17	14
Decree	17	14
Opinion	18	14
Assignment of errors	26	20
Petition for appeal	28	21
Order allowing appeal	30	22
Bond on appeal	31	23
Citation and service	33	25
Certificate of clerk to transcript	34	25

a *Caption.*

UNITED STATES OF AMERICA,
Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1901, and held in the court room of said court in the city of New Orleans, before the Honorable Don A. Pardee, the Honorable A. P. McCormick, and the Honorable David D. Shelby, United States circuit judges for the fifth judicial circuit.

MRS. MATILDA R. BEASLEY ET AL., Appellants,
vs.
TEXAS & PACIFIC RAILWAY COMPANY, Appellee. } No. 1141.

Be it remembered that heretofore to-wit., on the 13th day of March, 1902, a transcript of the record of the above styled cause from the circuit court of the United States for the western district of Louisiana was filed in the office of the clerk of said United States circuit court of appeals for the fifth circuit, in the words and figures following to-wit:

1 *Bill of Complaint.*

Circuit Court of the United States in and for the Western District of Louisiana.

MRS. MATILDA R. BEASLEY, Plaintiff,
versus
THE TEXAS AND PACIFIC RAILROAD COMPANY, Defendant. } In Equity. No. 241.

To the honorable the judges of the circuit court of the United States for the western district of Louisiana, in equity, sitting at Shreveport, in said district:

Mrs. Matilda R. Beasley of Shreveport, La., and a citizen of the State of Louisiana, herein joined, aided and authorized by her husband, Joseph C. Beasley, of Shreveport, La., and a citizen of the State of Louisiana, who has no conflicting interest, brings this her bill against the Texas and Pacific Railroad Company, a corporation organized under and by virtue of certain acts of the Congress of the United States, to-wit:

"An act to incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road and other purposes, ap-

proved March 3d, 1871; and an act supplementary thereto, approved March 2d, 1872."

And thereupon your orator complains and says:

1st. That she is the owner in her own separate right of a large plantation in the parish of Caddo, in said western district of Louisiana, situated on the right descending bank of Red river, in a rich alluvial district.

2d. That in the year 1899 a corporation organized under the laws of Louisiana with its domicile at Shreveport, under the name of the Texarkana, Shreveport and Natchez Railway Company, with G. W. Fouke as president, was engaged in constructing a railway from Texarkana, in the State of Texas, to the city of Shreveport, Louisiana.

3d. That the route of said railroad traversed your orator's plantation for a distance of one (1) and five-eighths (⅝) miles, and through the land of her friend, W. F. Dillon, for a distance of four and a half miles (4½), and that the right of way through these lands was well worth more than six thousand dollars ($6,000.00).

2 4th. That in order to secure said right of way through all of said lands, the said Texarkana, Shreveport and Natchez Railway Company entered into a contract of purchase from orator of a right of way through orator's land for the consideration of five hundred dollars ($500.00) and the further consideration that said railway company shall establish and build and maintain a depot and platform, and a switch and side track to be not less than fifteen hundred (1500) feet in length at such point upon said strip of land so conveyed as might be designated by your orator; and the further consideration that the said grantee or its assigns shall not build or establish or permit to be built or established any other depot along the line of said railroad within three miles north or south of the one above stipulated for, as will be seen by a duly certified copy of said act of sale, hereto annexed and made a part of this bill, and that the said W. F. Dillon thereupon signed and executed a deed of sale of the right of way through his lands above mentioned without other costs to said grantee than the considerations above stipulated in favor of your orator.

5th. That under said contract the said grantee built its road over said lands and established and built a depot and switch at Uni station on said plantation, and your orator spent more than eight thousand dollars for buildings and improvements in the way of building a town upon the faith that no rival depot would be built or established in less than the distance of three miles.

6th. That there is no public necessity or demand for any depot within said limits.

7th. That on the 9th day of February, 1901, the said Texarkana, Shreveport and Natchez Railway Company sold said railroad from Texarkana to Shreveport with all of its right of way and other property and franchises to the Texas and Pacific Railroad Company, a corporation organized under the acts of Congress of the United States, above recited in the beginning of this bill.

8th. That said Texas and Pacific Railroad Company purchased said railroad and right of way and franchises subject to the obligations and stipulations contained in the said act of sale from your orator and is bound by the same not to build, operate or establish a depot on said railroad within three miles of said depot at Uni station.

3 9th. That in violation of said contract and obligation, the said Texas and Pacific Railroad Company is now constructing a depot on said railroad at a point called Belcher within less than three miles, to-wit: about one and one-eighth (1⅛) miles from the said depot at Uni station on orator's plantation, and unless restrained and enjoined by the order and process of this court it will proceed to build and operate said depot in violation of said contract, and that your orator will be damaged by the destruction of the value of improvements placed upon said property and by the loss of all advantages derived from said contract, amounting to more than fifty thousand dollars ($50,000.00), which loss and destruction of her property will be irreparable and for which she has no adequate remedy at law, and that this suit arises under the laws of the United States within the meaning of the act of Congress of March 3d, 1875, as amended by the acts of Congress of March 3d, A. D. 1887, and August 13th, A. D. 1888. To the end, therefore, that your orator may have that relief which she can only obtain in a court of equity, and that the said defendant may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived, she now prays the court:

That your honors grant unto your orator your writ of injunction commanding said Texas and Pacific Railroad Company and all persons claiming to act under its authority, direction or control, to absolutely desist and refrain from building or operating said depot at Belcher or at any point on said railroad within three miles of the depot at Uni station on your orator's land until such time as your honors shall appoint and direct and order herein; and that upon such hearing the writ herein prayed for be made and confirmed until the final determination of this suit, and that thereupon the said injunction may be made perpetual.

And that your orator may have such further or other relief in the premises as the nature of the circumstances of the case may require.

May it please your honors to grant to your orator a writ of subpœna, to be directed to the said Texas and Pacific Railroad Company, represented by Robert Strong of New Orleans, Louisiana, and Wise & Herndon, their attorneys, of Shreveport, Louisiana, thereby commanding it at a certain time, and under a certain penalty, therein to be limited, personally to appear before this honorable court and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand, perform and

4 abide by such order, direction and decree as may be made

against him in the premises as shall seem meet and agreeable to equity.

And your orator will ever pray.

SUTHERLIN & HALL,
Solicitors for Complainants.

UNITED STATES OF AMERICA, }
Western District of Louisiana. }

On this, the 14th day of November, 1901, before me, the undersigned authority, personally appeared Mrs. Matilda R. Beasley and her husband, Joseph C. Beasley, the complainants in the foregoing bill, who, after being by me first duly sworn, declare and say that they have read the foregoing bill of complaint and know the contents thereof and that the same is true of their own knowledge, except as to matters therein stated on information and belief, and as to those matters they believe it to be true.

MATILDA R. BEASLEY
JOE C. BEASLEY.

Sworn to and subscribed to before me on this 14th day of November, 1901.

FRANK J. LOONEY,
Notary Public.

(Indorsed:) Filed Nov. 18th, 1901. R. L. Larkin, d'y clerk.

Sale of Right of Way Annexed to Bill of Complaint.

STATE OF LOUISIANA, }
Parish of Caddo. }

Be it known that this day before me, Lewis E. Carter, a notary public in and for the parish of Caddo, and State of Louisiana, duly commissioned and qualified, came and appeared Mrs. Matilda R. Beasley, wife of Joseph C. Beasley, joined, assisted and authorized herein by her said husband, resident in Caddo parish, aforesaid, who declared that she does by these presents, grant, bargain, sell, convey, and deliver, with full guarantee of title and complete transfer and subrogation of all rights and actions of warranty, against all former proprietors of the property herein conveyed unto the Texarkana, Shreveport and Natchez Railway Company, a corporation organized under the laws of Louisiana, with its domicile in Shreveport, La., herein represented by G. W. Fouke, president, the following described property, situated in Caddo parish, La., to-wit: A strip or belt of land one hundred feet in width across the plantation owned by this vendor, in said parish of Caddo, known as Uni plantation, said belt of land being about one and one-half miles in length, and containing as an area nineteen acres, more or less, said belt traversing that part of section eight (8), township twenty (20), range fourteen (14), lying south of Coushatta chute and Red bayou, and that part of

section seventeen (17), same township and range, lying east of Red bayou and along the line already surveyed and located by said railway company for a track of railroad already under construction from Texarkana into Caddo parish, aforesaid, with this proposed objective point, Shreveport, La.

To have and to hold said described property unto said railway company and its assigns, as long as the railroad is maintained and operated over and along the said strip of belt of land.

The consideration of the above and foregoing transfer and conveyance is declared to be the sum of five hundred dollars, cash in hand paid, the receipt of which is hereby acknowledged, and the further consideration that the said railway company shall establish and build and maintain, as long as the railroad shall be operated along and over the said belt of land, a depot and cotton platform, and a switch and side track, to be not less than fifteen hundred feet in length, at such point upon said strip of land herein conveyed as shall be designated by this grantor.

And it is declared that a further consideration of the above transfer is and shall be that said grantee or its assigns shall not build or establish or permit to be built, or establish any other depot along the line of said railroad within three miles north or south of the one above stipulated for on the land herein conveyed and that the railroad that shall be made and built along and over the land herein conveyed, shall be so built and maintained *so* as not to obstruct the drainage of the land of this grantor, lying along and contiguous to the lands herein conveyed.

It is hereby agreed by and between the parties hereto that the word depot as used in reading the foregoing clause shall be understood to mean a building containing a freight room and suitable waiting room for the accommodation of freight and passengers, and where an agent shall be kept and maintained, to operate a telephone and telegraph line with suitable instruments therefor and to sell passengers tickets and sign bills of lading and to be a place where all regular passenger trains are to stop without flag-ing.

The certificate of mortgages and tax receipt are hereby waived by the parties.

Done and passed at my office, in the city of Shreveport,
6 Caddo parish, Louisiana, in the presence of T. F. Bell and J. B. Slattery, competent witnesses, on this the 19th day of April, A. D. 1899.

M. R. BEASLEY.

I authorize,

J. C. BEASLEY.
TEXARKANA, SHREVEPORT & NATCHEZ RAILWAY CO.
G. W. FOUK, *President.*

Witnesses:

T. F. BELL.
J. B. SLATTERY.

LEWIS E. CARTER, *Notary Public.*

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appear- on file and of record in my office.

Give- under my hand and seal of office this 13th day of November, 1901.

F. C. O'LEARY,
[SEAL.] *D'y Clerk and ex-Officio Recorder.*

(Indorsed:) Filed November 18th, 1901. R. L. Larkin, d'y clerk.

Restraining Order.

In the Circuit Court of the United States for the Western District of Louisiana.

MRS. MATILDA R. BEASLEY and HUSBAND }
vs. } In Equity.
TEXAS & PACIFIC RAILWAY COMPANY. }

Whereas, in the above named cause it has been made to appear upon the bill of the complainant, filed herein, and the exhibits annexed thereto, and the affidavits of complainants attached thereto, that a writ of injunction preliminary to the final hearing is proper, and that *prima facie* the complainant is entitled thereto, enjoining the defendant herein from the acts complained of and threatened to be committed.

Now, on motion of the said complainant, it is ordered that the defendant appear before the circuit court of the United States, for the western district of Louisiana, in the fifth circuit, at the
7 court room of said court at Shreveport, Louisiana, upon the day of November 29th, 1901, at 10 o'clock a. m. of said day, and then and there show cause, if any it has, why the preliminary injunction therein prayed for should not issue, and it appearing to the undersigned circuit justice of the fifth circuit that there is danger of irreparable injury being caused to the complainant before the hearing of said application can be heard, unless the defendant is, pending such hearing, restrained, as hereinafter set forth.

Therefore, complainant's application for such restraining order is granted upon its giving a bond with two good and sufficient sureties, to be approved by the clerk of this court, in the penal sum of five hundred dollars, securing the defendant against all loss and damage which may result from the issue of said order, if it should be determined that the same is improperly issued.

Now, therefore, it is ordered that you, the said Texas (&) Pacific Railroad Company, your agents, servants, and attorneys, and all persons acting by or under your authority or direction, be and you

are hereby specially restrained and enjoined from building or operating a depot within three miles of the depot at Uni station, Belcher or any other point on said railroad, within said distance, until the further order of this court.

It is further ordered that a copy of this order, certified under the hand of the clerk and the seal of this court, be served on said defendant, to be restrained thereby.

It is further ordered that the bond to be furnished in the case be approved and accepted by clerk of the U. S. circuit court, at Shreveport, La. Dated this 15th day of November, 1901.

ALECK BOARMAN, *Judge.*

(Indorsed:) Filed November 18th, 1901. R. L. Larkin, d'y clerk.

8 *Defendant's Demurrer to Plaintiffs' Bill of Complaint.*

In the Circuit Court of the United States for the Western District of Louisiana.

MRS. MATILDA R. BEASLY, Plaintiff,
vs.
THE TEXAS & PACIFIC RAILWAY COMPANY, Defendant. } In Equity.

The demurrer of the above named defendant, The Texas & Pacific Railway Company, to the bill of complaint of the above named plaintiff.

This defendant by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true, in such manner and form as the same are herein set forth and alleged, doth demur to said bill, and for cause of demurrer showeth:

First. That it appeareth by the plaintiff's own showing in her said bill that she is not entitled to the relief prayed for therein against this defendant, for the reason that it appears from the allegations of said bill that she has a full, adequate and complete remedy at law, if any remedy she has, and this court is without jurisdiction, and further, there being no allegation or averment in said bill that this defendant is not solvent or able to respond to any recovery she may obtain in a court of law.

Wherefore, this defendant doth demur to said bill, and prays the judgment of this honorable court, whether it shall be compelled to make any answer to said bill, and it humbly prays to be hence dismissed, with its reasonable costs in this behalf sustained.

T. J. FREEMAN,
HOWE, SPENCER & COCKE,
LEONARD, RANDOLPH & RENDALL,
WISE & HERNDON,
Solicitors and Counsel for the Defendant, The Texas & Pacific Railway Company.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

T. J. FREEMAN,
Of Counsel for the Defendant, The Texas & Pacific Railway Co.

THE STATE OF TEXAS, }
County of Dallas. }

J. W. Everman, being duly sworn, deposes and says that
9 he is assistant general manager of the defendant, The Texas and Pacific Railway Company, and authorized to make this affidavit; that the foregoing demurrer is not interposed for delay.

J. W. EVERMAN.

Sworn to before me this the 5th day of December, A. D. 1901.

W. H. COPE,
Notary Public, Dallas Co., Texas.

(Indorsed:) Filed Dec. 12th, 1901. R. L. Larkin, d'y clerk.

Decree of Court Sustaining Defendant's Demurrer to Plaintiff's Bill of Complaints.

MRS. MATILDA R. BEASLY
vs.
THE TEXAS AND PACIFIC RY. CO. } No. 241. Eq.

This day coming on to be heard this cause upon the demurrer of the defendant, The Texas and Pacific Railway Company, filed herein on the 12th day of December, 1901. After hearing arguments of counsel, the court is of the opinion that said demurrer was well taken and same is in all things sustained, and the court so orders, adjudges and decrees.

It is therefore further ordered that the injunction heretofore granted be and the same is hereby dissolved and vacated and complainant's bill dismissed.

This 20th day of February, 1902.

ALECK BOARMAN, *Judge.*

(Indorsed:) Filed Febr'y 20th, 1902. W. Jackson, clerk.

10 *Plaintiff's Motion for Appeal from said Decree.*

In the United States Circuit Court, Western District of Louisiana, Shreveport Division.

MRS. MATILDA R. BEASLEY & Husband, Joseph C. Beasley, Complainants,
vs.
THE TEXAS & PACIFIC RAILWAY COMPANY. } No. 241. In Equity.

To the Honorable Aleck Boarman, district judge and one of the judges of the above named court, presiding therein:

The above named complainants in the above entitled cause, Mrs. Matilda R. Beasley and husband, Joseph C. Beasley, conceiving themselves ag-rieved by the order and decree made and entered in the above entitled cause on the 20th day of February, A. D. 1902, at this term of said court, wherein and whereby it was ordered, adjudged and decreed that the demurrer filed by defendants that the said complainants were without right to the writ of injunction on the equity side of the court and that complainants were without right to relief in equity, as prayed for in the bill of complaint, but the complainants' only relief was for damages in an action at law, be sustained and that said bill of complaint be dismissed, do hereby appeal from said order and decree of the 20th day of February, A. D. 1902, rendered therein at this term of said court to the United States circuit court of appeals for the fifth circuit, for the reasons specified in the assignment of errors filed herein, and they pray that this appeal may be allowed, and that a transcript of the record, papers and proceedings upon which said order and decree was made, duly authenticated, may be sent to the United States circuit court of appeals for the fifth circuit.

Dated February 27th, A. D. 1902.

MATILDA R. BEASLY,
JOSEPH C. BEASLY,
Complainants.
SUTHERLIN AND HALL,
Solicitors for Complainants and of Counsel.

(Indorsed:) Filed February 27th, 1902. W. Jackson, clerk.

11 *Plaintiff's Assignment of Error.*

United States Circuit Court of Appeals, Fifth Circuit.

MRS. MATILDA R. BEASLY and Husband, Joseph C. Beasly,
vs.
TEXAS & PACIFIC RAILWAY COMPANY.
No. 241. In Equity.

On appeal from the United States circuit court, western district of Louisiana, Shreveport division.

Now come the complainants, Mrs. Matilda R. Beasly and husband, Joseph C. Beasly, and file the following assignment of errors, on which they will rely on their appeal from the decree made by this honorable court at this term on the 20th day of February, A. D. 1902, in the above entitled cause, to-wit:

1. That the said court erred in sustaining the demurrer interposed and filed by defendants to plaintiff's bill in equity and dismissing said bill, and by holding and deciding that complainants have no right to the relief in equity, as prayed for in said bill, but that complainants have only an action at law for damages.

Wherefore, complainants pray that the judgment of said court be reversed, and that said demurrer be overruled, and that said case be remanded with directions to reinstate the same and to proceed according to law.

SUTHERLIN & HALL,
Solicitors for Complainants and of Counsel.

(Indorsed:) Filed February 27th, 1902. W. Jackson, clerk.

12 *Order Allowing Appeal.*

At a stated term, to-wit: the February term, A. D. 1902, of the circuit court of the United States of America, of the fifth judicial circuit, in and for the western district of Louisiana, held at the courtroom in the city of Shreveport, State of Louisiana, on the 27th day of February, A. D. 1902.

Present: The Honorable Aleck Boarman, district judge, and one of the judges of said circuit court, sitting therein.

MRS. MATILDA R. BEASLY and Husband, Joseph C. Beasly,
vs.
TEXAS & PACIFIC RAILWAY COMPANY.
No. 241. In Equity.

On reading and filing the petition of complainants herein, Mrs. Matilda R. Beasley and husband, Joseph C. Beasley, for an order al-

lowing an appeal, and the assignments of errors herein made and filed by said complainants and appellants.

On motion of Sutherlin and Hall, solicitors and of counsel for complainants and appellants, it is ordered that an appeal to the United States circuit court of appeals for the fifth circuit, from the final decree heretofore filed and entered herein at this term of said court, sustaining defendant's demurrer to complainants' bill in equity, be, and the same hereby is allowed, defendant's counsel being present in open court, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said United States court of appeals.

It is further ordered that the bond on appeal be fixed at the sum of one hundred dollars, the same to act as a supersedeas bond and also as a bond for costs and damages on appeal.

Done and signed, after having been read in open court, on this February 27th, A. D. 1902.

ALECK BOARMAN, *Judge.*

(Indorsed:) Filed February 27th, 1902. W. Jackson, clerk.

13 *Bond on Appeal.*

United States Circuit Court, Western District of Louisiana, Shreveport Division.

MRS. MATILDA R. BEASLEY and Husband, Joseph C. Beasley,
vs.
TEXAS & PACIFIC RAILROAD COMPANY. } No. 241. In Equity.

Know all men by these presents: That we, Matilda R. Beasley and husband, Joseph C. Beasley, of Shreveport, Caddo parish, Louisiana, as principal, and William F. Dillon, of Shreveport, Caddo parish, Louisiana, are held and firmly bound unto the Texas and Pacific Railroad Company in the sum of one hundred dollars, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs and executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals, and dated at Shreveport, Louisiana, on this 27th day of February, A. D. 1902.

Whereas, the above named Mrs. Matilda R. Beasley and husband, Joseph C. Beasley, have prosecuted an appeal to the United States circuit court of appeals for the fifth circuit, to reverse the decree rendered in the above entitled suit by the circuit court of the United States for the western district of Louisiana.

Now, therefore, the condition of this obligation is such that if the above named Mrs. Matilda R. Beasley and husband, Joseph C. Beasley, complainants and appellants, shall prosecute said appeal to effect, and answer all costs and damages that may be adjudged or

awarded against them if they fail to make said appeal and plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

M. R. BEASLEY.
J. C. BEASLEY.
W. F. DILLON.

Attest:
C. M. WALKE.
W. J. BAYERSDOFFER.

Taken and approved by me on this 27th day of February, A. D. 1902.

ALECK BOARMAN, *Judge.*

(Indorsed:) Filed February 27th, 1902. W. Jackson, clerk.

14 *Minutes of Court.*

SHREVEPORT, LOUISIANA,
THURSDAY, *February 20th*, 1902.

MRS. M. R. BEASLEY
vs.
TEXAS & PACIFIC RY. } No. 241.

This cause came on this day to be heard upon the demurrer filed by the defendant, and after argument *at* (by) counsel the court sustained the demurrer and dissolved the injunction. (See decree.)

SHREVEPORT, LOUISIANA,
THURSDAY, *February 27th*, 1902.

MRS. M. R. BEASLEY
vs.
TEXAS & PACIFIC RY. } No. 241.

Application for appeal filed and appeal granted. (See decree.)

15 *Præcipe for Transcript.*

In the United States Circuit Court, Western District of Louisiana, Shreveport Division.

MRS. MATILDA R. BEASLEY and Husband, Joseph C. Beasley,
vs.
TEXAS AND PACIFIC RAILROAD COMPANY. } No. 241. In Equity.

To the clerk of the above entitled court:

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the United States circuit court of

appeals for the fifth judicial circuit, under the appeal hereto perfected to said court and include in said transcript the following pleadings, proceedings and papers on filt (file), to-wit:

1. Bill of complaint.
2. Sale of right of way annexed to bill of complaint.
3. Restraining order.
4. Defendant's demurrer to plaintiffs' bill of complaint.
5. Decree of court sustaining defendant's demurrer to plaintiffs' bill of complaint.
6. Plaintiffs' motion for appeal from said decree.
7. Plaintiffs' assignment of error.
8. Order allowing appeal.
9. Bond for appeal.
10. Minutes of court.

Said transcript to be prepared, as required by law, and the rules of this court and the rules of the United States circuit court of appeals for the fifth circuit, and on file in the office of the clerk of the said circuit court of appeals within thirty days.

Dated at Shreveport, Louisiana, February 27th, A. D. 1902

SUTHERLIN AND HALL,
Solicitors and of Counsel for Complainants.

(Indorsed:) Filed Febr'y 27th, 1902. E. C. Jackson, d'y clerk.

16 *Clerk's Certificate of Transcript.*

In the United States Circuit Court, Western District of Louisiana, Shreveport Division.

MRS. MATILDA R. BEASLEY and Husband, Joseph C. Beasley,
vs.
TEXAS AND PACIFIC RAILROAD COMPANY.
} No. 241. In Equity.

I, Walter Jackson, clerk of the circuit court of the United States of America, of the fifth judicial circuit, in and for the western district of Louisiana, do hereby certify the foregoing pages numbered from 1 to 22 inclusive, to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return on complainants' appeal.

I further certify that the cost of the foregoing return on said appeal is $6.25, and that same has been paid by complainants.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court this the 5th day of March, A. D. 1902.

W. JACKSON,

[SEAL.] *Clerk United States Circuit Court, Western District of Louisiana.*

17 United States Circuit Court of Appeals for the Fifth Circuit, November Term, 1901, April 30, 1902.

(Extract from Minutes.)

MATILDA R. BEASLEY ET AL.
vs.
TEXAS & PACIFIC RAILWAY COMPANY. } No. 1141.

This cause was regularly called this day and submitted to the court after argument by Mr. W. P. Hall for appellants and by Mr. W. W. Howe, for appellee.

November Term, 1901, May 13th, 1902.

(Extract from Minutes.)

MRS. MATILDA R. BEASLEY ET AL.
vs.
TEXAS & PACIFIC RAILWAY COMPANY. } No. 1141.

This cause came on to be heard on the transcript of the record, from the circuit court of the United States for the western district of Louisiana, and was argued by counsel.

On consideration whereof. It is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be, and the same is hereby reversed, and this cause remanded to said circuit court with instructions to enter a decree dismissing the bill for want of jurisdiction in equity, and without prejudice to any action at law to which the complainants, as advised by counsel may think themselves entitled.

It is further ordered, adjudged and decreed that the appellee The Texas & Pacific Railway Company be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

18 United States Circuit Court of Appeals, Fifth Circuit, November Term, 1901.

Filed May 13, 1902. Charles H. Lednum, Clerk.

MRS. MATILDA R. BEASLEY ET AL., Appellants,
vs.
TEXAS & PACIFIC RAILWAY COMPANY, Appellee. } No. 1141.

Appeal from the U. S. circuit court, western district of Louisiana.

Before Pardee, McCormick, and Shelby, circuit judges.

Mrs. Matilda R. Beasley, complainant in the circuit court, appellant here brought her bill against the Texas & Pacific Railway Company and therein alleged.

1st. "That she is the owner in her own separate right of a large plantation in the parish of Caddo, in said western district of Louisiana, situated on the right descending bank of Red river, in a rich alluvial district.

2nd. That in the year 1899 a corporation organized under the laws of Louisiana with its domicile at Shreveport. under the name of the Texarkana, Shreveport and Natchez Railway Company, with G. W. Fouke as president, was engaged in constructing a railway from Texarkana, in the State of Texas, to the city of Shreveport, Louisiana.

3rd. That the route of said railroad traversed your orator's plantation for a distance of one (1) and five-eight-s (⅝) miles, and through the land of her friend, W. F. Dillon, for a distance of four and a half miles (4½), and that the right of way through these lands was well worth more than six thousand dollars ($6,000.00).

4th. That in order to secure said right of way through all of said lands the said Texarkana, Shreveport and Natchez Railway Company entered into a contract of purchase from orator of a right of way through orator's land for the consideration of five hundred dollars ($500.00) and the further consideration that said railway company shall establish and build and maintain a depot and platform, and a switch and side track to be not less than fifteen hundred feet in length at such point upon said strip of land so conveyed as might be designated by your orator; and the
19 further consideration that the said grantee or its assigns shall not build or establish or permit to be built or established any other depot along the line of said railroad within three miles north or south of the one above stipulated for, as will be seen by a duly certified copy of said act of sale, hereto annexed and made a part of this bill and that the said W. F. Dillon thereupon signed and executed a deed of sale of the right of way through his lands above mentioned without other costs to said grantee than the considerations above stipulated in favor of your orator.

5th. That under said contract the said grantee built its road over said lands and established and built a depot and switch at Uni station on said plantation, and your orator spent more than eight thousand dollars for buildings and improvements in the way of building a town upon the faith that no rival depot would be built or established in less than the distance of three miles.

6th. That there is no public necessity or demand for any depot within said limits.

7th. That on the 9th day of February, 1901, the said Texarkana, Shreveport and Natchez Railway Company, sold said railroad from Texarkana to Shreveport with all of its right of way and other property and franchises to the Texas & Pacific Railroad Company, a corporation organized under the acts of Congress of the United States, above recited in the beginning of this bill.

8th. That said Texas & Pacific Railroad Company purchased said railroad and right of way and franchises subject to the obligations and stipulations contained in the said act of sale from your orator

and is bound by the same not to build, operate or establish a depot on said railroad within three miles of said depot at Uni station.

9th. That, in violation of said contract and obligation the said Texas and Pacific Railway Company is now constructing a depot on said railroad at a point called Belcher, within less than three miles, to-wit; about one and one-eight- (1⅛) miles from the said depot at Uni station on orator's plantation, and unless restrained and enjoined by the order and process of this court, it will proceed
20 to build and operate said depot in violation of said contract and that your orator will be damaged by the destruction of the value of improvements placed upon said property and by the loss of all advantages derived from said contract, amounting to more than fifty thousand dollars ($50,000.00) which loss and destruction of her property will be irreparable and for which she has no adequate remedy at law, and that this suit arises under the laws of the United States within the meaning of the act of Congress of March 3rd, 1875, as amended by the acts of Congress of March 3rd, A. D. 1887, and August 13th A. D. 1888."

The prayer of the bill was for an injunction *pendente lite* to be in due course made perpetual.

The Texas & Pacific Railway Company appeared and filed a demurrer to the bill and for cause of demurrer showed,

"That it appeareth by the plaintiff's own showing in her said bill that she is not entitled to the relief prayed for therein against this defendant, for the reason that it appears from the allegations of said bill that she has a full, adequate and complete remedy at law, if any remedy she has, and this court is without jurisdiction, and further there being no allegation or averment in said bill that this defendant is not solvent or able to respond to any recovery she may obtain in a court of law."

This demurrer was heard and on argument was sustained by the circuit court, and thereupon the complainant's bill was dismissed.

Whereupon, the complainants sued out this appeal, assigning as error the ruling on the demurrer.

PARDEE, circuit judge, delivered the opinion of the court:

As the circuit court rendered an absolute decree dismissing the bill, which would probably bar proceedings instituted at law for the recovery of damages, it is probable that the court in hearing the demurrer allowed other causes of demurrer to be orally assigned in addition to the cause assigned upon the record. The rule permitting this is thus declared in Bates Federal Procedure vol. 1, section 204
as follows:
21 "A defendant is not limited to one cause of demurrer, but may assign as many causes as his counsel may deem proper, either to the whole bill or to each part of the bill demurred to; and if any one of the causes assigned be held good by the court the demurrer will be allowed. And the defendant may on the argument, at the hearing, orally assign other causes of demurrer, different or in addition to those assigned upon the record, which if valid will

support the demurrer, although the causes of demurrer stated upon the record be held to be invalid."

In this court the appellee urges in support of the decree appealed from that the bill is defective because one of the original contracting parties, the Texarkana, Shreveport & Natchez Railway Company, is not made a party; that the complainant has a complete and adequate remedy at law; and, that the contract as alleged, in so far as it stipulates and restricts as to the location of depots along the line of railway, is contrary to public policy and void. As there is no averment that the Texarkana Shreveport & Natchez Railway Company is doing anything or proposes to do anything in violation of its contract with complainant and no relief is prayed against said railway company or affecting it, it does not seem to be a necessary party to the suit, and if it is a necessary party, the defect can be cured by amendment to the bill.

It is not clear that the complainant has, for the wrong alleged, a complete and adequate remedy at law. Damages are not always easily ascertained and sometimes do not and cannot adequately compensate. A remedy which prevents a threatened wrong is in its essential nature nearer adequate and complete than a remedy which permits the wrong to be done and then attempts to compensate by damages assessed by a jury. See Pom. Eq. Jur. vol. 3, section 1357.

These remarks are pertinent to the case in hand for the bill alleges only indirect and remote damages and the case presented seems to be one in which before a jury it would be very difficult to point out and prove much if any actual damage. However, in the matter of damages from the threatened wrong in this case, if the bill is defective in not being sufficiently specific or in not alleging direct damage the complainant might perhaps amend, and before
22 her bill should be dismissed, on that sole ground, she should be given an opportunity to amend.

The objection based on public policy presents the real difficulty in maintaining this bill. The appellee as owner and operator of the Texas Shreveport & Natchez Railway Company is a public common carrier, operating public franchises, and is under duties and obligations to the State and public. Operating in Louisiana and under a Louisiana charter. it is, by article 284 of the Louisiana constitution of 1898, subject as to the building and location of depots (and in many other matters) to the control of the Louisiana Railway Commission. Aside from this, it is bound in the public interest and in its own interest to establish such stations and build and locate such depots along and near the railroad as the convenience to the public, the transaction of business and the rapid and economical transportation of goods and passengers may require.

In Texas & Pacific Railway Company *vs.* Scott was involved the right of the railway company to abandon a depot originally located, constructed and maintained in consideration of the right of way granted, and this court said:

"It must be that such an agreement is made subject to the general exigencies of business, the public interests, and to the change, modi-

fication and growth of transportation routes, as these may affect the requirements of the railway company's business." 23 C. C. A. 424, 429.

In Florida Central &c. R. R. Co. *v.* State *ex rel.* Tavares, 31 Fla. 509, in dealing with a restrictive contract as to the location of railroad depots, the supreme court of Florida well says on principle and authority:

"We can not admit that an individual is entitled to call for the interference of a court of equity to compel a railroad company to locate unchangeably its depot at a particular spot to subserve the private advantages of such individual. Railroad companies in order to fulfill one of the ends of their creation—the promotion of the public welfare—should be left free to establish and re-establish their depots wheresoever the accomodation of the wants of the public may require. To grant the relief asked for by the complainant, we would regard as against public policy."

In People *ex rel. vs.* Chicago & Alton R. R. Co. 130 Ill. 175, the court says: "It is in recognition of the paramount duty of railway companies to establish and maintain their depots at such points and in such manner as to subserve the public necessities and convenience, that it has been held by all the courts with very few exceptions, that contracts materially limiting their power to locate and re-locate their depots are against public policy, and therefore void." The same doctrine was announced by Ch. J. Shaw, in Fuller *vs.* Dame, 18 Pick. 472; and also in St. Jos. & D. C. R. R. Co. *vs.* Ryan 11 Kansas 602; Pacific R. R. Co. *vs.* Seeley 45 Mo. 212; Currie *vs.* Natchez, Jackson & C. R. R. Co. 61 Miss. 725. In Mobile & Ohio R. R. Co. *vs.* The People 132 Ill. 559, the court says: "The location of stations for the receipt and discharge of passengers and freight at points most desirable for the convenience of travel and business being indispensable to the efficient operation of a railroad and the enjoyment of it by the public, the railway company cannot be compelled on the one hand, to locate stations at points where the cost of maintaining them will exceed the profits resulting therefrom to the company nor allowed, on the other hand, to locate them so far apart as to practically deny to the communities on the line of the road reasonable access to its use. A railway company cannot be compelled to maintain or continue a station at a point when the welfare of the company and the community in general requires that it should be changed to some other point. A railway company cannot bind itself by contract with individuals, to locate and maintain stations at particular points or to not locate and maintain them at other points. The company must be left free to establish and re-establish its depot wherever the public welfare or wants of the public may require." The same doctrine is held in Holladay *vs.* Patterson 5 Oregon 177, in which case the court says: "A railroad company is a quasi public corporation and the public have an interest in the location of their lines of roads and depots. An agreement which tends to lead persons charged with the performance of trusts

or duties for the benefit of others, to violate or betray them
24 will not be enforced."

In Texas & Pacific Railway Company *vs.* Marshall, it is held that a contract to forever maintain a terminus, shops and offices at a particular place without regard to the business of the company and the interests of the public is not one to be enforced in a court of equity. 136 U. S. 393.

The present bill alleges "that there is no public necessity or demand for any depot within said limits," *i. e.:* within three miles north and south of Uni station; but we take this to be largely a conclusion of the pleader and not to be taken as conclusively admitted by the demurrer. Whether or not the interest of the public or the railway company demands a depot within the said limits is a question involving facts and judgment which a court of equity under proper allegations might perhaps deal with, but which in our opinion, should be left to the determination of the officials of the railway company under the regulations of the railroad commission. It is not probable, and certainly not to be assumed on a naked allegation, that the railway company will voluntarily locate and build a depot not believed by the officials of the company to be necessary for the transaction and furtherance of the railway's business or the just and proper convenience of the public.

In Texas & Pacific Railway Company *vs.* Marshall, *supra*, a case much relied upon by both parties, there is an intimation that while equity will not grant relief in cases of this kind, there may be a remedy at law in an action for damages.

It would seem that where under a contract, which is in part contrary to public policy, a valuable consideration in the way of property has passed, that the courts should not deny all relief and thus allow one party to be enriched at the expense of another not guilty of actual turpitude; and it has been held that where under a contract absolutely void because unlawful a valuable property has been transferred, while no action based on the contract will lie to recover the property, still the right of recovery may be permitted in a proper case based on a disaffirmance of the contract because of the
desire of the courts to do justice as far as possible to the
25 party who has made payment or delivered property under a
void agreement which in justice he ought to recover. See Pullman Car Co. *vs.* Central Transportation Co. 171 U. S. 138.

The real question presented in the court below and renewed in this court is whether the complainant for the matters alleged in her bill can have relief in a court of equity, and it is only incidentally involved here as to whether the complainant for the same matters can have relief in a court of law.

For the reasons given, we are of opinion that the complainant can have no remedy in equity. As to the right to a remedy elsewhere we express no opinion further than as herein outlined.

The decree appealed from is absolute as to the dismissal of the bill, and as it may be considered a bar to an action at law, it is ordered and adjudged that said decree be reversed, and the cause re-

manded to the circuit court with instructions to enter a decree dismissing the bill for want of jurisdiction in equity and without prejudice to any action at law to which the complainant as advised by counsel may think herself entitled.

26 *Assignment of Errors.*

In the Supreme Court of the United States.

MRS. MATILDA R. BEASLEY and Husband, JOSEPH C. Beasley, Appellants,
vs.
TEXAS & PACIFIC RAILWAY COMPANY, Appellees.
No. 1141.

On appeal from the United States circuit court of appeals for the fifth circuit.

In equity.

And now come the complainants, Mrs. Matilda R. Beasley and husband Joseph C. Beasley and file the following assignment of errors on which they will rely on their appeal from the decree and judgment made and rendered by the United States circuit court of appeals for the fifth circuit at this term of said court, on the 13th day of May, A. D. 1902, in the above entitled cause, to-wit:

(1.) That the said United States circuit court of appeals for the fifth circuit erred in said decree and judgment in this, in holding and deciding that the complainants were without right to the writ of injunction on the equity side of the court and that complainants were without right to relief in equity as prayed for in the bill of complaint and that the United States circuit court for the western district of Louisiana, Shreveport division, from the judgment of which court sustaining the defendant's special demurrer to complainants' bill in equity for want of jurisdiction in equity the appeal was taken by complainants to the said United States circuit court of appeals, fifth circuit, was without jurisdiction to entertain said bill of complaint or grant or perpetuate the injunction on the equity side of said court as prayed for; and in holding and deciding that complainants' only relief is by action at law for
27 damages; and in remanding said case to said circuit court of the United States for the western district of Louisiana, Shreveport division, with instructions to said court to enter a decree dismissing said bill of complaint for want of jurisdiction in said United States circuit court for the western district of Louisiana, Shreveport division, to entertain said suit, or to grant or perpetuate said injunction on the equity side of said court.

Wherefore complainants pray that the said judgment and decree of the United States circuit court of appeals for the fifth circuit be reversed, and that this case be remanded to the United States cir-

cuit court for the western district of Louisiana, Shreveport division, with instructions to overrule defendant's special demurrer to plaintiffs' bill of complaint and to reinstate said case, and to revive and reinstate the injunction therein and further proceed therein according to law.

SUTHERLIN & HALL,
Solicitors for Complainants and of Counsel.

Endorsed: Assignment of errors. Filed May 19, 1902. Charles H. Lednum, clerk.

28 *Petition for Appeal.*

In the United States Circuit Court of Appeals, Fifth Circuit.

MRS. MATILDA R. BEASLEY and Husband, JOSEPH C. Beasley, Complainants, Appellants,
vs.
THE TEXAS & PACIFIC RAILWAY COMPANY, Appellees. } No. 1141.

On appeal from the United States circuit court for the western district of Louisiana, Shreveport division.

In equity.

To the honorable the judges of the United States circuit court of appeals for the fifth circuit:

The above named complainants and appellants in the above entitled cause, Mrs. Matilda R. Beasley and husband Joseph C. Beasley, conceiving themselves aggrieved by the final judgment, order and decree rendered and made and entered in the above entitled cause by the United States circuit court of appeals for the fifth circuit, on the 13th day of May, A. D. 1902, at this term of said court, wherein and whereby it was ordered, adjudged and decreed that the complainants were without right to the writ of injunction on the equity side of the court and that complainants were without right to relief in equity as prayed for in the bill of complaint and that complainants' only relief was for damages in an action at law and that this case be remanded to the United States circuit court for the western district of Louisiana, Shreveport division with instructions to enter a decree dismissing the bill of complaint for want of jurisdiction in equity, without prejudice to complainants' right of action at law for damages, do hereby appeal from said final judgment, order and decree rendered, made and entered in said case on the 13th day of May, A. D. 1902, at this term of said court, to the honorable Supreme Court of the United States, on the grounds and for the reasons specified and set forth in the assignment of errors, filed herein and that the defendant, The Texas & Pacific Railway Company, is a corporation created organized and

chartered under an act of Congress entitled "An act to incorporate the Texas & Pacific Railway Company, and
29 to aid in the construction of its road and other purposes," approved March 3rd, 1871, and an act supplementary thereto approved March 2nd 1872 and that this is a suit arising under the laws of the United States within the meaning of the act of Congress of March 3rd, 1875, as amended by the acts of Congress of March 3rd, 1887 and August 13th, 1888; and that the said judgment rendered in this suit on appeal by the United States circuit court of appeals for the fifth circuit is not a final judgment within the meaning of section six (6) of the act of Congress entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes" approved March 3rd, 1891, and that the matter in controversy in said case exceeds one thousand dollars besides costs; and that they are entitled to an appeal from said judgment rendered in said case as aforesaid by said United States circuit court of appeals to the honorable Supreme Court of the United States.

Wherefore they pray that this their appeal from the said judgment of the United States circuit court of appeals for the fifth circuit may be allowed to the honorable Supreme Court of the United States, and that the original restraining order and injunction granted in this case be revived and reinstated and continued in force until final hearing on said appeal, without additional bond; and that a transcript of the record papers and proceedings on which said decree and judgment were made and rendered, duly authenticated, may be sent to the Supreme Court of the United States; and so they will ever pray.

MRS. M. R. BEASLEY,
J. C. BEASLEY.
Per W. P. HALL. *Att'y,*
Complainants.

SUTHERLIN & HALL,
Solicitors for Complainants and of Counsel.

Endorsed: Motion for appeal Filed May 19, 1902. Charles H. Ledlum, clerk.

30 *Order Allowing Appeal.*

At a stated term, to-wit: the November term A. D. 1901, of the United States circuit court of appeals for the fifth circuit, held at the court room in the city of New Orleans, State of Louisiana, on the — day of May, A. D. 1902.

Present: The honorable the judges of said co urt, sitting therein

MRS. MATILDA R. BEASLEY and Husband, JOSEPH C. Beasley, Appellants,
vs.
TEXAS & PACIFIC RAILWAY COMPANY.
No. 1141.

In equity.

On reading and filing the petition of complainants herein, Mrs. Matilda R. Beasley and husband Joseph C. Beasley for an order allowing an appeal, and the assignment of errors, herein made and filed by said complainants and appellants.

On motion of Sutherlin & Hall solicitors and of counsel for complainants and appellants, it is ordered that an appeal to the Supreme Court of the United States from the final judgment and decree heretofore on May 13th A. D. 1902, by this court rendered, entered and filed herein, be and the same is hereby allowed: and that a certified transcript of the record and all proceedings be forthwith transmitted to the Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of five hundred dollars, the same to act as a supersedeas bond and also as a bond for costs and damages on appeal.

Done and signed after having been read in open court on this May 19th, A. D. 1902.

DON A. PARDEE, *Judge.*

Endorsed: Order allowing appeal. Filed May 19, Charles H. Lednum clerk.

31 *Bond on Appeal.*

In the United States Circuit Court of Appeals, Fifth Circuit.

MRS. MATILDA R. BEASLEY and Husband, JOSEPH C. Beasley, Appellants,
vs.
TEXAS & PACIFIC RAILWAY COMPANY, Appellees.
No. 1141.

In equity.

Know all men by these presents that we Matilda R. Beasley and husband, Joseph C. Beasley, of Shreveport, Caddo parish, Louisiana, as principal, and William F. Dillon of Shreveport, Caddo parish, Louisiana, as surety, are held and firmly bound unto the Texas & Pacific Railway Company in the sum of five hundred dollars, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators and legal representatives jointly and severally by these presents.

Sealed with our seals and dated at Shreveport, Louisiana, on this May 21st, A. D., 1902.

Whereas the above named Mrs. Matilda R. Beasley and husband, Joseph C. Beasley, have prosecuted an appeal to the United States Supreme Court to reverse the decree and judgment rendered in the above entitled suit by the *the* United States circuit court of appeals for the fifth circuit.

Now therefore the condition of this obligation is such that if the above named Mrs. Matilda R. Beasley and husband Joseph C. Beasley, complainants and appellants shall prosecute said appeal to effect and answer all costs and damages that may be adjudged or awarded against them in case they fail to make said appeal and plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

M. R. BEASLEY.
J. C. BEASLEY.
W. F. DILLON.

Attest:
CHAS. L. GAINES.
T. F. BELL, Jr.

32 *Acknowledgement.*

STATE OF LOUISIANA, }
Caddo Parish. }

Be it remembered that on this 21st day of May, A. D. 1902, before me S. L. Herold, a notary public in and for the parish and State above written, personally appeared Mrs. Matilda R. Beasley and her husband Joseph C. Beasley and William F. Dillon, to me well known to be the identical persons who executed and signed the above and foregoing bond on appeal, and they acknowledged to me that they executed and signed the same for the uses and purposes therein expressed.

Witness my signature and seal of office on this May 21st, A. D. 1902.

S. L. HEROLD,
[SEAL.] *Notary Public in and for Caddo Parish, State of Louisiana.*

STATE OF LOUISIANA, }
Caddo Parish. }

Before me S. L. Herold, notary public in and for Caddo parish, Louisiana, personally appeared William F. Dillon a resident of said parish and State, who after being duly sworn, says on oath that he is the surety on the above and foregoing bond on appeal and that he is worth and owns property of the value of twenty thousand dollars and more, over and above his exemptions and liabilities.

W. F. DILLON.

Sworn to and subscribed before me on this May 21st, A. D. 1902.

S. L. HEROLD,
Notary Public, Caddo Parish, La.

Approval of Bond on Appeal.

The above and foregoing bond on appeal is taken and approved by me in open court at New Orleans La., on this May 22, A. D. 1902.

DON A. PARDEE,
Judge United States Circuit Court of Appeals, Fifth Circuit.

Endorsed: Bond on appeal. Filed May 22, 1902. Charles H. Lednum, clerk.

33 THE UNITED STATES OF AMERICA:

Circuit Court of Appeals of the United States, Fifth Circuit.

The President of the United States to the Texas & Pacific Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, within 30 days from date hereof, pursuant to an order of appeal filed in the clerk's office of the United States circuit court of appeals for the fifth circuit wherein Matilda R. Beasley and Joseph C. Beasley are appellants and The Texas and Pacific Railway Company is appellee to show cause, if any there be, why the judgment rendered against the said Matilda R. Beasley and Joseph C. Beasley as in said order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 22d day of May in the year of our Lord one thousand nine hundred and two.

DON A. PARDEE,
Circuit Judge.

Service accepted for appellee.

HOWE, SPENCER & COCKE,
Att'ys for T. & P. Ry. Co.

[Endorsed:] United States circuit court of appeals 5th circuit. No. 1141. Matilda R. Beasley *et al. vs.* Texas & Pacific Railway Company. Citation of appeal. Filed May 22 1902 Charles H. Lednum clerk of the United States circuit court of appeals.

34 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 34 pages, numbered from *a* to 33, inclusive, contain a true copy of the record, assignment of errors, and all proceedings had, except that

the original citation on appeal is included therein instead of a copy thereof, in the case of—

MRS. MATILDA R. BEASLEY ET AL., Appellants,
versus
TEXAS & PACIFIC RAILWAY COMPANY, Appellee. } No. 1141.

as the same remains upon the files and records of said United States circuit court of appeals.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, Louisiana, this 24th day of May A. D. 1902.

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Endorsed on cover: File No. 18,597. U. S. C. C. of appeals, 5th circuit. Term No. 79. Matilda R. Beasley and Joseph C. Beasley, appellants, *vs.* The Texas & Pacific Railway Company. Filed June 27", 1902.